IN THE HIGH COURT OF JUDICATURE AT PATNA
CR. WJC No.228 of 2007
SHIVENDRA SHARMA @ SHIVENDRA KUMAR SHARMA & ORS
Versus
THE STATE OF BIHAR & ORS
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5 22.12.2008. Heard learned counsel for the parties.

2. The petitioners seek quashing of (a) entire proceeding in complaint case no. 273 of 1996 giving rise to trial no 182 of 2006, annexure 1, (b) the order dated 26.2.2001, passed in Criminal revision no. 293 of 1999, annexure 2, and (c) the order dated 17.10.2001, passed by the Chief Judicial Magistrate, Siwan in said complaint case no. 273 of 1996, annexure 3, and (d) the order dated 28.12.2006, passed in trial no. 182 of 2006, annexure 4.

3. As the petitioners have sought as many as four reliefs in this case, it would be necessary to advert to the orders challenged in this quashing application.

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4. The complaint case no. 273 of 1996 has been filed in court of CJM, Siwan by opp party no.2, namely, Sheopujan Mishra now dead and substituted by his son Chandra Bhushan Mishra. In the aforesaid case, he made allegation against Ram Kishun Sharma, son of Sheopujan Sharma, petitioner no.1 and others including opp party no.2 to 5 of having kidnapped and killed his son in conspiracy with each other. The petitioners have sought quashing of order dated 26.2.2001, passed by the Sessions judge, Siwan in revision no. 293 of 1999, whereby he set aside the dismissal of complaint by Chief Judicial Magistrate, Siwan and directed him to make further enquiry in complaint and pass order in accordance with law. The 3rd order challenged is one dated 17.12.2001, passed by CJM, Siwan in the aforesaid complaint case, whereby cognizance of offence under sections 302,364,120B of the I.P.C. was taken

and subsequently warrant was issued against accused persons for facing trial. The last order challenged is dated 28.12.2006, passed in trial no. 182 of 2006, annexure 4, whereby the trial court has rejected the prayer of the petitioner to stay the operation of the process issued against him under sections 82, 83 of the Cr. P. C., till decision of Sessions Trial No.125 of 1998 in Chapra court.

5. The facts of this case is that one Umesh Mishra alias Babua ji son of late Sheopujan Mishra, opp. party was killed on 29.2.1996 at village Nawada in district of Chapra. Incidentally, the accused of this complaint case no. 273 of 1996 who is petitioner no.1 in this writ application lodged fard beyan of murder of the aforesaid Umesh Mishra giving rise to Rivilganj PS case no. 27 of 1996. Late Sheopujan Mishra, father of deceased Umesh Mishra filed a complaint case before the CJM, Siwan stating therein that accused persons came to his village Jhanjhru within Siwan district on 29.2.1996 and took away his son by deceiving him and in conspiracy of each other got him killed at village Nawada in the district of Chapra. In the aforesaid complaint case, the informant of Rivilganj Police Station case no. 27 of 1996 and his sons have been made an accused. Thus there are rival versions in respect of the occurrence in question. In Rivilganj ps case no. 27 of 1996 charges have been framed and a number of witnesses have also been examined.

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6. On receipt of the complaint no. 273 of 1996, learned CJM forwarded the same to the police to be registered under section 156(3) of the Cr.P.C. The Officer in charge of Rivilganj Police Station reported that since with regard to the occurrence, Daraunda Police Station case no. 27 of 1996 is already instituted, there seemed no need for institution of a fresh case. Thereupon the Chief Judicial Magistrate, Siwan wrote to DIG, Saran to direct

the IO to have the case investigated in the direction of the facts mentioned in the complaint petition. The complainant moved this court vide Cr. W J C No. 831 of 1996, and this Court by order dated 8.8.1997 contained in annexure 13 directed the magistrate to proceed with the complaint case no. 273 of 1996.

7. The leaned magistrate conducted the enquiry and by order dated 27.11.1999 dismissed the complaint petition which order was reversed by revisional court in Cr. revision no. 293 of 1999 by order dated 26.2.2001, contained in annexure 15. Thereafter, the revisional court directed the Chief Judicial Magistrate, to make enquiry and pass order in accordance with law. After making further enquiry the learned magistraste by order dated 17.10.2001 took cognizance of offence under sections 364,120B I.P.C. and issued warrant of arrest against the petitioners to face trial.

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8. Some of the petitioners challenged the aforesaid order dated 17.10.2001 taking cognizance and summoning them to face trial vide in Cr Misc. No. 33318 of 2004 which was permitted to be withdrawn vide order dated 25.11.2005, contained in annexure 5, passed by Hon'ble Mr Justice Nagendra Rai, as his lordship then was.

9. The petitioner again has prayed for the same relief and this court finds no reason to take any different view which was taken three years back by the court, permitting withdrawal of the application. It is unfortunate that the petitioners have once again sought the same relief which was not granted to him in the aforesaid Cr misc no. 33318 of 2004 disposed of on 25.11.2005. In the aforesaid order dated 25.11.2005, this court also noticed that one Vishwakarma Sharma, one of the accused had filed application under section 482 of the Cr.P.C. for transferring of Sessions Trial No. 125 of 1998 arising

out of Rivilganj Police Station case no. 27 of 1996 as well as the instant complaint case no. 273 of 1996 to one and same court which was also dismissed vide order dated 3.11.2004, passed in Cr misc no. 20605 of 2004, annexure 6. It is relevant to state that petitioner no.1 filed Cr misc no. 2276 of 2002 which too was dismissed by a bench of this court vide order dated 25.9.2002, annexure 7 with liberty mentioned therein.

10. Furthermore, the petitioners did not state in this writ application that petitioner no.1 had earlier moved this court vide Cr WJC No. 159 of 1998 which too was dismissed as withdrawn vide order dated 2.4.1998. The petitioners have however sated in his subsequent affidavit that non description of the aforesaid fact was a bona fide mistake, as they have mentioned regarding other applications filed before the court.

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11. The petitioner has now once again tried to seek substantially the same relief. He raised two points, firstly, order allowing revision application dated 26.2.2001 against dismissal of complaint without hearing him is in violation of provision to section 398 Cr.P.C. and secondly, there has been violation of provision of section 210 Cr.P.C.

12. Learned counsel for the petitioners in support of the contention has relied upon decision rendered in cases of Gouranga Charan Bhuyan vs Fakir Charan Nayak and others and Sohan lal and others Vs State of Rajasthan, reported in 1978 Cri L. 287 and AIR 1990 SC 2158. Cases relied upon by the petitioners is not applicable in the instant case, as the facts are different.

13. Proviso to Section 398 Cr.P.C. mandates that no Court shall make any direction under this section for inquiry into the case of any person who has been discharged unless such person has had an opportunity of

showing cause why such direction should not be made.

14. The aforesaid revision application was filed against order of dismissal and not against order of discharge. There are different views whether in revision against dismissal of complaint, the accused is to be heard apart from State as the Statute does not specifically provide so. Some of the High Courts are of the view that as an accused in a complaint case comes actually in picture after issuance of summons he in no way acquire any right to be heard in revision preferred against order of dismissal of complaint under section 203 Cr.P.C. But as the petitioner has already in effect challenged the aforesaid order earlier and has lost in this court, as such, this plea cannot be entertained again and same is rejected.

15. The second contention of the petitioners that there has been violation of section 210 Cr.P.C. is also not tenable in the eye of law. The decision relied by the petitioners rendered in the case of State of Madhya Pradesh Vs Mishri Lal (dead) and others, reported in 2003 SC 4089 too is not applicable in the facts of the case. This court finds that the petitioners have already moved this court for seeking similar relief which has been rejected earlier.

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16. The petitioners have challenged the order dated 28.12.2006, passed in trial no. 182 of 2006, annexure 4, whereby the learned Chief Judicial Magistrate rejected the prayer of the petitioners to stay the operation of process issued against them till the disposal of Sessions Trial No. 125 of 1998 pending in the trial court at Chapra.

17. Leaned counsel appearing for opposite parties states that anticipatory bail of some of the petitioners have been rejected up to this Court

vide Cr. Misc No. 15152 of 2006 and they are not appearing in the court though the case is of the year 1996. In fact the petitioners who are accused in the case have adopted dilatory tactics of delaying trial on one plea or the other.

18. I find that there is no illegality in the impugned order passed by the Chief Judicial Magistrate rejecting the application of the petitioner staying the issuance of process pending disposal of trial no. 182 of 2006. The cognizance of offence under sections 302,364,120B of the I.P.C. was taken on 17.12.2001 and the aforesaid order stood the challenge up to this Court. The subsequent order under sections 82 & 83 of the Cr.P.C. is a corollary consequent to order of cognizance for ensuring the appearances of accused who are absconding and evading summons and warrant. As such, the learned magistrate has not committed any illegality in not staying the processes against the petitioners as accused have not appeared in the court despite issuance of warrant. In the result there is no merit in the writ petition. The same stands dismissed.

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Shashi. **(S.P.Singh,J).**